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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FCC Secretary
Original

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JUN - 8 2004

In the Matter of

Federal Communications Commission
Office of Secretary

Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations
(Anniston, Alabama)

MB Docket No. 04-79
RM-10873
RM-10874

To: The Media Bureau

INFORMATIONAL COMMENTS

Preston W. Small (Mr. Small), by his attorney, hereby provides comments regarding the captioned rulemaking proceeding. In support whereof, the following is respectfully submitted:

1) While conducting research undersigned counsel uncovered the captioned rulemaking proceeding which proposes to designate Channel 261C3 as a "reserved" non-commercial channel. While the Commission expects that parties to proceedings are aware of ongoing matters which might affect their proposals, undersigned counsel thought it would be courteous to inform the parties to the captioned rulemaking proceeding about a pending matter which could affect their future plans.

2) The Commission recently renewed WNNX LICO, Inc.'s license for Channel 263C at Anniston, AL (File No. BRH-20031204AFH) (33° 37' 38" N; 085° 53' 25" W). WNNX LICO, Inc.'s licensed Anniston, AL site for Channel 263C appears to be approximately 5.6 miles from the referenced site coordinates for the second adjacent Channel 261C3 at issue in the captioned rulemaking proceeding.¹ WNNX LICO, Inc.'s Channel 263C allocation and the subject Channel 261C3 allocation appear to undersigned counsel to be conflicting and it does not appear that they could coexist. WNNX LICO, Inc.'s Channel 263C Anniston allocation, and Channel 262C's non-

¹ 47 C.F.R. § 73.203(b)(1) specifies that the separation between a C3 allocation and a second adjacent C allocation shall be 60 miles.

List ABCDE

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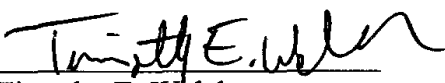
final relocation to the Atlanta, GA market area (College Park, GA), is the subject of an ongoing rulemaking proceeding in MM Docket No. 98-112 which is currently in the United States Court of Appeals for the D.C. Circuit (Nos 04-1056, 04-1057).

3) Previously the Commission has notified other rule petitioners of the tentative nature of the reallocation of Channel 263C from Anniston and has conditioned grants accordingly. *See e.g., Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Auburn, Northport, Tuscaloosa, Camp Hill, Gardendale, Homewood, Birmingham, Dadeville, Orrville, Goodwater, Pine Level, Jemison, and Thomaston, Alabama)*, 18 FCC Rcd. 10333 ¶¶ 21, 28, 44, 46(d) (Aud. Div. 2003). Counsel's examination of the information thus far submitted in the captioned rulemaking proceeding, including underlying Commission documents, did not seem to reveal any explicit notice to the parties to the proceeding that they proceed at their risk in pursuing the proposals at issue in the captioned rulemaking proceeding. While such prior notice from the Commission is not a requirement given the well established Commission policy that parties to a rulemaking proceeding are responsible for informing themselves about potential road blocks which might exist, undersigned counsel did not want the parties to proceed much further absent this brief notification in the event that they were unaware of MM Docket 98-112.

WHEREFORE, the parties to the rulemaking proceeding now have explicit notice that their efforts in this rulemaking proceeding are subject to ongoing MM Docket No. 98-112 and the Commission is reminded that it has, in other rulemaking proceedings, conditioned construction activity upon finality being achieved in MM Docket No. 98-112.

Hill & Welch
1330 New Hampshire Ave., N.W. #113
Washington, D.C. 20036
(202) 775-0070
(202) 775-9026 (FAX)
welchlaw@earthlink.net
June 7, 2004

Respectfully submitted,
PRESTON W. SMALL


Timothy E. Welch
His Attorney

CERTIFICATE OF SERVICE


I hereby certify that I have this 7th day of June 2004 served a copy of the foregoing INFORMATIONAL COMMENTS by First-Class United States mail, postage prepaid, upon the following:

Rolanda F. Smith
Audio Services Division
Federal Communications Commission
Washington, D.C. 20554

Denise B. Moline, Esq.
1212 S. Naper Blvd. #119-215
Naperville, IL 60540

Patrick J. Vaughn, General Counsel
American Family Association
P.O. Drawer 2440
Tupelo, MS 38803

Mark N. Lipp
Vinson & Elkins
1455 Pennsylvania Ave., NW #600
Washington, D.C. 20004-1008
Counsel to WNNX LICO, Inc.


Timothy E. Welch